

diagnosed by biopsy or autopsy, yields massive lesions in the lungs, or (3) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in paragraph (c) (1) or (2) of this section if diagnosis had been made in the manner prescribed in paragraph (c) (1) or (2) of this section, then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis, as the case may be; and

(d) If a miner was employed for 15 years or more before July 1, 1971, in one or more underground coal mines, and if there is a chest roentgenogram submitted in connection with such miner's, his widow's, his child's, his parent's, his brother's, his sister's, or his dependent's claim and it is interpreted as negative with respect to the requirements of paragraph (c) of this section, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis. In the case of a living miner, a wife's affidavit may not be used by itself to establish the presumption. A State shall not apply all or a portion of the requirement of this paragraph that the miner work in an underground mine where it determines that conditions of a miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine. Such presumption may be rebutted only by establishing that (1) such miner does not, or did not, have pneumoconiosis, or that (2) his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.

§ 722.120 Total disability determination.

The Act requires that benefits be paid for total disability of a miner if pneumoconiosis prevents him from en-

gaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he previously engaged with some regularity and over a substantial period of time. No State workmen's compensation law shall be included on the Secretary's list if such law prohibits a finding that a miner is totally disabled solely on the basis of his ability to engage in gainful noncoal mine related employment, except that in cases where a miner engaged in noncoal mine related employment utilizes skills comparable to those required in his coal mine employment, it may be found that such miner is not entitled to benefits for total disability due to pneumoconiosis.

§ 722.121 Cause of death.

Section 421 of the Act requires the Secretary to find, before including a State workmen's compensation law in his listing of laws which provide adequate coverage for pneumoconiosis, that such law assures payment of benefits for total disability or death of a miner, determined under standards substantially equivalent to those established under part B of title IV of the Act, in all cases where either such total disability or such death was due to pneumoconiosis. Accordingly, in the case of death benefits, such benefits must be paid whether the miner's death or his total disability at the time of death was due to pneumoconiosis. Thus, sections 401 and 430 of the Act require that benefits be paid (a) for death due to pneumoconiosis and (b) for death due to any cause if the miner was totally disabled by pneumoconiosis at the time of his death. No State workmen's compensation law shall be included on the Secretary's list unless it contains a provision or provisions equivalent to those described in this section.

CRITERIA: ADMINISTRATIVE STANDARDS

§ 722.122 Administrative standards—generally.

In order to insure that each claimant for pneumoconiosis benefits under a State workmen's compensation law be afforded full due process of law, including notice and opportunity to be heard

on all matters materially affecting such claimant's claim, no State workmen's compensation law shall be included on the Secretary's list unless it provides, or regulations promulgated pursuant to such law provide (a) that a claimant in a contested case shall have a right to a full adversary hearing to resolve contested issues of fact or law, (b) that a claimant shall be notified of and shall have a means of legal recourse by right in the event that any adverse action is taken in respect of his claim, and (c) that a claimant shall in appropriate cases be entitled to have his claim finally adjudicated by an appellate court of the State.

§ 722.123 Cessation of payment of benefits.

No State workmen's compensation law shall be included on the Secretary's list unless such law provides, or regulations promulgated pursuant to such law provide, that in the event the payment of benefits to any beneficiary is terminated or suspended for any reason, such beneficiary shall be given prior notice thereof and shall have an opportunity to be heard in a formal proceeding before an appropriate adjudication officer of the State in respect of such suspension or termination, and that such investigations, including medical examination, shall be undertaken as will properly protect the rights of all parties.

§ 722.124 Regulation of fees for legal services.

Unrestricted fees for legal services incurred by a claimant in the pursuit of a claim undermine the intent of Congress expressed in the enactment of title IV of the Act. Section 28 (33 U.S.C. 928) of the Longshoremen's Act, as incorporated by section 422(a) of the Act, requires the Secretary to exercise reasonable control over professional fees for services incurred by a claimant in the pursuit of a claim. Accordingly, no State workmen's compensation law shall be included on the Secretary's list if such law permits unrestricted or unreasonable fees for services rendered in the pursuit of a claim to be charged to a claimant.

CRITERIA: GUARANTEE OF BENEFITS TO ELIGIBLE INDIVIDUALS

§ 722.126 Guarantee of benefits—generally.

It is the intent of the Act to insure that every eligible individual who has proven his entitlement to benefits for total disability or death due to pneumoconiosis shall be guaranteed such benefits whether or not there is in existence an employer, coal mine operator, or insurance carrier who is or may be adjudicated liable for the payment of such benefits. No State workmen's compensation law shall be included on the Secretary's list unless such law explicitly provides that every claimant who is, based upon the medical evidence and the evidence of such claimant's identity as a miner or eligible relation or dependent, entitled to receive benefits for total disability or death due to pneumoconiosis shall be paid such benefits either by a responsible coal mine operator or employer or such operator or employer's insurance carrier, or by the State from its general revenue or whatever funds are available for such purposes. A State must bear the ultimate liability for the payment of benefits to an entitled individual in all cases where no other source of benefits is available to such claimant.

§ 722.127 Voluntary and elective compensation systems.

A State workmen's compensation law may be included on the Secretary's list, notwithstanding the fact that such law permits voluntary or elective participation by an employer or coal mine operator in any program to insure the payment of benefits for total disability or death due to pneumoconiosis: *Provided*, That there is in effect in such State an alternative system to guarantee that all benefits including medical benefits shall be paid.

§ 722.128 Responsible coal mine operators.

Sections 421 and 422 of part C of title IV as well as the legislative history of the Act, indicate that Congress intended the coal mine operators in the several States to bear as fully as possible the liability for the payment of